

ACT NO. 8075

BILL NO. 32-0233

THIRTY-SECOND LEGISLATURE OF THE VIRGIN ISLANDS

Regular Session

2018

An Act amending title 22 of the Virgin Islands Code, by adding chapter 26 entitled Annual Audit and Financial Reporting, to meet the accreditation standards established by the National Association of Insurance Commissioners and to update the insurance laws of the Territory and to give greater and more effective protection to the policyholders of the Territory; and repealing title 22 Virgin Islands Code, section 222a

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WHEREAS, the laws governing the insurance industry in the Virgin Islands are outdated as many of the laws were enacted in 1968 and have not been updated; and

WHEREAS, the laws governing the insurance industry in the Virgin Islands do not grant to the Commissioner of Insurance of the Virgin Islands all of the necessary authority to effectively regulate the solvency of the multi-state domestic insurance industry in the Territory; and

WHEREAS, all other United States jurisdictions have periodically updated their insurance laws commensurate with the ever-evolving insurance industry; and

WHEREAS, the National Association of Insurance Commissioners ("NAIC") has established core accreditation standards and a comprehensive set of laws, known as the Model Laws and Regulations, in order to assist United States jurisdictions in their regulation of the solvency of their multi-state domestic insurance industry thereby affording greater protection to the policyholders in the United States; and

WHEREAS, all of the 50 United States and the Commonwealth of Puerto Rico have adopted the NAIC Model Laws and Regulations and the accreditation requirements and are now in substantial compliance with the NAIC accreditation standards; and

WHEREAS, the enactment of the Annual Audit and Financial Reporting requirements for insurers that are licensed to do business in the Territory will place the Territory on par with other United States jurisdictions and will satisfy one of the NAIC

requirements for bringing the Territory into compliance with the NAIC accreditation standards; Now, Therefore,

Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. Title 22 Virgin Islands Code is amended by adding chapter 26 to read as follows:

“Chapter 26 Annual Audit and Financial Reporting

§621. Definitions

As used in this chapter –

(a) “Accountant” or “independent certified public accountant” means an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants (AICPA) and in all states in which public accountant or firm is licensed to practice; for Canadian and British companies, the term means a Canadian-chartered or British-chartered accountant; for companies domiciled in all other countries it means an independent qualified accountant certified or chartered in the company’s country of domicile.

(b) “Affiliate of”, or “person affiliated with” means a specific person, a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(c) “Audit committee” means a committee or equivalent body established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or group of insurers, the internal audit function of an insurer or group of insurers, if applicable, and external audits of financial statements of the insurer or group of insurers. The audit committee of any entity that controls a group of insurers is considered the audit committee for one or more of these controlled insurers solely for the purposes of this chapter at the election of the controlling person. If an audit committee is not designated by the insurer, the insurer’s entire board of directors constitutes the audit committee.

(d) “Audited financial report” includes those items specified in section 625.

(e) “Division” means the Division of Banking, Insurance and Financial Regulation.

(f) “Indemnification” means an agreement of indemnity or a release from liability where the intent or effect is to shift or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing of other misrepresentations made by the insurer or its representatives.

(g) “Independent board member” has the same meaning as described in section 634, subsection (d).

(h) “Insurer” means a licensed insurer as defined in chapter 1, section 4 of this title.

(i) “Group of insurers” means those licensed insurers included in the reporting requirements of the Virgin Islands Insurance Holding Company System Regulatory Act, or a set of insurers as identified by management, for the purpose of assessing the effectiveness of Internal control over financial reporting.

(j) “Internal audit function” means a person or persons that provide independent, objective and reasonable assurance designed to add value and improve an organization’s operations and accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.

(k) “Internal control over financial reporting” means a process effected by an entity’s board of directors, management and other personnel designed to provide reasonable assurance regarding the reliability of the financial statements with respect to the items specified in section 625 (b)(2) through (b)(7), and the policies and procedures that:

(1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets;

(2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of the financial statements, with respect to the items specified in section 625 (b)(2) through (b)(7), and that receipts and expenditures are being made only in accordance with authorizations of management and directors; and

(3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of assets that could have a material effect on the financial statements with respect to the items specified in section 625 (b)(2) through (b)(7).

(l) “SEC” means the United States Securities and Exchange Commission.

(m) “Section 404” means section 404 of the Sarbanes-Oxley Act of 2002 and the SEC’s rules and regulations promulgated thereunder.

(n) “Section 404 Report” means management’s report on “internal control over financial reporting” as defined by the SEC and the related attestation report of the independent certified public accountant.

(o) “SOX Compliant Entity” means an entity that either is required to be compliant with, or voluntarily is compliant with, all of the following provisions of the Sarbanes-Oxley Act of 2002: (i) the preapproval requirements of Section 201 (Section 10A(i) of the Securities Exchange Act of 1934); (ii) the audit committee independence requirements of Section 301 (Section 10A(m)(3) of the Securities Exchange Act of 1934);

and (iii) the internal control over financial reporting requirements of Section 404 (Item 308 of SEC Regulation S-K).

§622. General Requirements Related to Filing and Extensions for Filing of Annual Audited Financial Reports and Audit Committee Appointment

(a) All insurers shall have an annual audit by an independent certified public accountant and shall file an audited financial report with the Commissioner on or before June 1 for the year ended December 31 immediately preceding. The Commissioner may require an insurer to file an audited financial report earlier than June 1 with 90 days advance notice to the insurer.

(b) Extensions of the June 1 filing date may be granted by the Commissioner for 30-day periods upon a showing by the insurer and its independent certified public accountant of the reasons for requesting an extension and determination by the Commissioner of good cause for an extension. The request for extension must be submitted in writing not later than 10 days before the due date in sufficient detail to permit the Commissioner to make an informed decision with respect to the requested extension.

(c) If an extension is granted in accordance with subsection (b), a similar extension of 30 days is granted to the filing of Management's Report of Internal Control over Financial Reporting.

(d) Every insurer required to file an annual audited financial report pursuant to the requirements of this chapter shall designate a group of individuals as constituting its audit committee. The audit committee of an entity that controls an insurer is considered to be the insurer's audit committee for purposes of this chapter at the election of the controlling person.

§623. Suspension or Revocation for Failure to File

(a) Every insurer is subject to the requirements of this chapter. Insurers having direct premiums written in this Territory of less than \$1,000,000 in any calendar year and less than 1,000 policyholders or certificate holders of direct written policies nationwide at the end of the calendar year are exempt from these requirements for the year, unless the Commissioner makes a specific finding that compliance is necessary for the Commissioner to carry out statutory responsibilities, but insurers having assumed premiums pursuant to contracts or treaties of reinsurance of \$1,000,000 or more are not exempt from the requirements.

(b) The Commissioner shall suspend or revoke the certificate of authority of any insurer who fails to timely file its audited annual report unless an extension is requested and granted in accordance with section 622.

§624. Exemptions

(a) Foreign insurers filing the audited financial report in another state, pursuant to that state's requirement for filing of audited financial reports, which has been found by the

Commissioner to be substantially similar to the requirements of this chapter, are exempt from sections 622 through 633 if:

(1) A copy of the audited financial report, Communication of Internal Control Related Matters Noted in an Audit, and the Accountant's Letter of Qualifications that are filed with the other state are filed with the Commissioner in accordance with the filing dates specified in required in sections 622, and 631-632, respectively. Canadian insurers may submit accountants' reports as filed with the Office of the Superintendent of Financial Institutions, Canada.

(2) A copy of any Notification of Adverse Financial Condition Report filed with the other state is filed with the Commissioner within the time specified in section 630.

(b) Foreign insurers required to file the Management's Report on Internal Control over Financial Reporting in another state are exempt from filing the report in this Territory provided the other state has substantially similar reporting requirements and the report is filed with the commissioner of the other state within the time specified.

(c) The requirements of this chapter do not prohibit, preclude or in any way limit the Commissioner of Insurance from ordering or conducting or performing examinations of insurers under the rules and regulations and practices and procedures of the Virgin Islands Office of the Lieutenant Governor, Division of Banking, Insurance and Financial Regulation.

§625. Contents of Annual Audited Financial Report

(a) The annual audited financial report must state the financial position of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows and changes in capital and surplus for the year then ended in conformity with statutory accounting practices prescribed, or otherwise permitted, by the department of insurance of the state/territory of domicile.

(b) The annual audited financial report must include the following:

- (1) Report of independent certified public accountant;
- (2) Balance sheet reporting admitted assets, liabilities, capital and surplus;
- (3) Statement of operations;
- (4) Statement of cash flow;
- (5) Statement of changes in capital and surplus;
- (6) Notes to financial statements that, are required by the appropriate NAIC Annual Statement Instructions and the NAIC Accounting Practices and Procedures Manual and must include a reconciliation of differences, if any, between the audited

statutory financial statements and the annual statement filed pursuant to section 222 of this title, with a written description of the nature of these differences; and

(7) The financial statements included in the audited financial report must be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the Commissioner, and the financial statement must be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. In the discretion of the Commissioner, the comparative data may be omitted in the first year in which an insurer is required to file an audited financial report.

§626. Designation of Independent Certified Public Accountant

(a) Each insurer required by this chapter to file an annual audited financial report must, no later than 60 days after becoming subject to the requirement, register with the Commissioner in writing the name and address of the independent certified public accountant or accounting firm retained to conduct the annual audit set forth in this chapter. Insurers not retaining an independent certified public accountant on the effective date of this chapter shall register the name and address of their retained independent certified public accountant not less than six months before the date when the first audited financial report is to be filed.

(b) The insurer shall obtain a letter from the accountant, and file a copy with the Commissioner stating that the accountant is aware of the provisions of the insurance code and the regulations of the insurance department of the state of domicile that relate to accounting and financial matters and affirming that the accountant will express an opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by that insurance department, specifying such exceptions as the accountant may believe appropriate.

(c) If an accountant who was the accountant for the immediately preceding filed audited financial report is dismissed or resigns, the insurer has five business days to notify the Commissioner of this event. The insurer shall also furnish the Commissioner with a separate letter no later than 10 business days of the above notification stating whether in the 24 months preceding the event if there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure; which disagreements, if not resolved to the satisfaction of the former accountant, would have caused the former accountant to make reference to the subject matter of the disagreement in connection with the former accountant's opinion. The disagreements required to be reported in response to this subsection include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this subsection are those that occur at the decision-making level, i.e., between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report. The insurer shall also in writing request the former accountant to furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons for which the former accountant does not agree; and the insurer shall furnish

the responsive letter from the former accountant to the Commissioner together with its own.

§627. Qualifications of Independent Certified Public Accountant

(a) The Commissioner may not recognize a person or firm as a qualified independent certified public accountant if the person or firm: is not in good standing with the American Institute of Certified Public Accountants (AICPA) and in all states in which the accountant is licensed to practice, or, for a Canadian or British company, that is not a chartered accountant; or has either directly or indirectly entered into an agreement of indemnity or release from liability with respect to the audit of the insurer.

(b) Except as otherwise provided in this section, the Commissioner shall recognize an independent certified public accountant as qualified as long as the independent certified public accountant conforms to the standards of the independent certified public accountant's profession, as contained in the Code of Professional Ethics of the AICPA and Rules and Regulations and Code of Ethics and Rules of Professional Conduct of the Virgin Islands Board of Accountancy, or similar code.

(c) A qualified independent certified public accountant may contract with an insurer to have disputes relating to an audit resolved by mediation or arbitration. However, if a delinquency proceeding is commenced against the insurer under chapter 51 of this title, the mediation or arbitration provisions operate at the option of the statutory successor.

(d)(1) The lead or coordinating audit partner having primary responsibility for the audit may not act in that capacity for more than five consecutive years. The person is disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of five consecutive years. An insurer may make application to the Commissioner for relief from the rotation requirement under this subsection on the basis of unusual circumstances. This application must be made at least 30 days before the end of the calendar year. The Commissioner may consider the following factors in determining if the relief should be granted:

(A) Number of partners, expertise of the partners or the number of insurance clients in the currently registered firm;

(B) Premium volume of the insurer; or

(C) Number of jurisdictions in which the insurer transacts business.

(2) The insurer shall file, with its annual statement filing, the approval for relief from paragraph (1) with the states that it is licensed in or doing business in and with the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

(e) The Commissioner may neither recognize as a qualified independent certified public accountant, nor accept an annual audited financial report, prepared in whole or in part by, a natural person who has:

(1) been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Sections 1961 to 1968, or any dishonest conduct or practices under federal, territorial or state law;

(2) been found to have violated the insurance laws of this territory with respect to any previous reports submitted under this chapter; or

(3) demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under this chapter.

(f) The Commissioner of Insurance may hold a hearing, in accordance with chapter 7 of this title, to determine whether an independent certified public accountant is qualified and, considering the evidence presented, may rule that the accountant is not qualified for purposes of expressing the accountant's opinion on the financial statements in the annual audited financial report made pursuant to this chapter and require the insurer to replace the accountant with another whose relationship with the insurer is qualified within the meaning of this chapter.

(g)(1) The Commissioner may not recognize as a qualified independent certified public accountant, nor accept an annual audited financial report, prepared in whole or in part by an accountant who provides to an insurer, contemporaneously with the audit, the following non-audit services:

(A) Bookkeeping or other services related to the accounting records or financial statements of the insurer;

(B) Financial information systems design and implementation;

(C) Appraisal or valuation services, fairness opinions, or contribution-in-kind reports;

(D) Actuarially-oriented advisory services involving the determination of amounts recorded in the financial statements;

(E) Internal audit outsourcing services;

(F) Management functions or human resources;

(G) Broker or dealer, investment adviser, or investment banking services;

(H) Legal services or expert services unrelated to the audit; or

(I) Any other services that the Commissioner determines, by regulation, are impermissible.

(2) The accountant may assist an insurer in understanding the methods, assumptions and inputs used in the determination of amounts recorded in the financial statement only if it is reasonable to conclude that the services provided will

not be subject to audit procedures during an audit of the insurer's financial statements. An accountant's actuary may also issue an actuarial opinion or certification on an insurer's reserves if the following conditions have been met:

(A) Neither the accountant nor the accountant's actuary has performed any management functions or made any management decisions;

(B) The insurer has competent personnel or engages a third party actuary to estimate the reserves for which management takes responsibility; and

(C) The accountant's actuary tests the reasonableness of the reserves after the insurer's management has determined the amount of the reserves.

(3) Accountants may not function in the role of management, cannot audit their own work, and cannot serve in an advocacy role for the insurer.

(h) Insurers having direct written and assumed premiums of less than \$100,000,000 in any calendar year may request an exemption from subsection (g)(1). The insurer shall file with the Commissioner a written statement discussing the reasons why the insurer should be exempt from these provisions. If the Commissioner finds, upon review of this statement, that compliance with this section would constitute a financial or organizational hardship upon the insurer, an exemption may be granted.

(i) A qualified independent certified public accountant who performs the audit may engage in other non-audit services, including tax services, that are not described in subsection (g)(1) or that do not conflict with subsection (g)(3), only if the audit committee is in compliance with the SEC's Final Rule No. 33-8183, *Strengthening the Commission's Requirements Regarding Auditor Independence*, adopted January 28, 2003 and any amendments thereto and if the audit committee approves the activity in advance, in accordance with subsection (j).

(j) All auditing services and non-audit services provided to an insurer by the qualified independent certified public accountant of the insurer must be preapproved by the audit committee. The preapproval requirement is waived with respect to non-audit services if the insurer is a SOX Compliant Entity or a direct or indirect wholly-owned subsidiary of a SOX Compliant Entity or:

(1) The aggregate amount of all such non-audit services provided to the insurer constitutes not more than five percent of the total amount of fees paid by the insurer to its qualified independent certified public accountant during the fiscal year in which the non-audit services are provided;

(2) The services were not recognized by the insurer at the time of the engagement to be non-audit services; and

(3) The services are promptly brought to the attention of the audit committee and approved prior to the completion of the audit by the audit committee or by one or more members of the audit committee who are the members of the board of

directors to whom authority to grant such approvals has been delegated by the audit committee.

(k) The audit committee may delegate to one or more designated members of the audit committee the authority to grant the preapprovals required by subsection (j). The decisions of any member to whom this authority is delegated must be presented to the full audit committee at each of its scheduled meetings.

(f)(1) The Commissioner may not recognize an independent certified public accountant as qualified for a particular insurer if a member of the board, president, chief executive officer, controller, chief financial officer, chief accounting officer, or any person serving in an equivalent position for that insurer, was employed by the independent certified public accountant and participated in the audit of that insurer during the one-year period preceding the date that the most current statutory opinion is due. This subsection applies only to partners and senior managers involved in the audit. An insurer may make application to the Commissioner for relief from the above requirement on the basis of unusual circumstances.

(2) The insurer shall file, with its annual statement filing, the approval for relief from paragraph (1) of this subsection with the states that it is licensed in or doing business in and the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

§628. Consolidated or Combined Audits

An insurer may make a written application to the Commissioner for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements if the insurer is part of a group of insurance companies that utilizes a pooling or 100 percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer cedes all of its direct and assumed business to the pool. In such cases, a columnar consolidating or combining worksheet must be filed with the report, as follows:

(1) Amounts shown on the consolidated or combined audited financial report must be shown on the worksheet;

(2) Amounts for each insurer subject to this subsection must be stated separately;

(3) Noninsurance operations may be shown on the worksheet on a combined or individual basis;

(4) Explanations of consolidating and eliminating entries must be included; and

(5) A reconciliation must be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statements of the insurers.

§629. Scope of Audit and Report of Independent Certified Public Accountant

Financial statements furnished pursuant to section 625 must be examined by the independent certified public accountant. The audit of the insurer's financial statements must be conducted in accordance with generally accepted auditing standards. In accordance with AU Section 319 of the Professional Standards of the AICPA, Consideration of Internal Control in a Financial Statement Audit, the independent certified public accountant shall obtain an understanding of internal control sufficient to plan the audit. To the extent required by AU 319, for those insurers required to file a Management's Report of Internal Control over Financial Reporting pursuant to section 2637, the independent certified public accountant shall consider as that term is defined in Statement on Auditing Standards (SAS) No. 102, Defining Professional Requirements in Statements on Auditing Standards or its replacement the most recently available report in planning and performing the audit of the statutory financial statements. Consideration must be given to the procedures illustrated in the Financial Condition Examiners Handbook promulgated by the National Association of Insurance Commissioners as the independent certified public accountant considers necessary.

§630. Notification of Adverse Financial Condition

(a) The insurer required to furnish the annual audited financial report shall require the independent certified public accountant to report, in writing, within five business days to the board of directors or its audit committee any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the Commissioner as of the balance sheet date currently under audit or that the insurer does not meet the minimum capital and surplus requirement of the Virgin Islands insurance code as of that date. An insurer that has received a report pursuant to this paragraph shall forward a copy of the report to the Commissioner not later than five business days of receipt of the report and shall provide the independent certified public accountant making the report with evidence of the report being furnished to the Commissioner. If the independent certified public accountant fails to receive the evidence within the required five business day period, the independent certified public accountant shall furnish to the Commissioner a copy of its report within the next five business days.

(b) No independent certified public accountant is liable in any manner to any person for any statement made in connection with the above paragraph if the statement is made in good faith in compliance with subsection (a).

(c) If the accountant, subsequent to the date of the audited financial report filed pursuant to this section, becomes aware of facts that may have affected the accountant's report, the accountant is required to take action as prescribed in Volume I, Section AU 561 of the Professional Standards of the AICPA.

§631. Communication of Internal Control Related Matters Noted in an Audit

(a) In addition to the annual audited financial report, each insurer shall furnish the Commissioner with a written communication as to any unremediated material weaknesses in its internal control over financial reporting noted during the audit. The communication must be prepared by the accountant not later than 60 days after the filing

of the annual audited financial report, and must contain a description of any unremediated material weakness, as the term "material weakness" is defined by "Statement on Auditing Standard 60, Communication of Internal Control Related Matters Noted in an Audit", or its replacement, as of December 31 immediately preceding, so as to coincide with the audited financial report discussed in section 622(a) in the insurer's internal control over financial reporting noted by the accountant during the course of their audit of the financial statements. If no unremediated material weaknesses were noted, the communication must so state.

(b) The insurer is required to provide a description of remedial actions taken or proposed to correct unremediated material weaknesses, if the actions are not described in the accountant's communication.

§632. Accountant's Letter of Qualifications

The accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual audited financial report, a letter stating:

(1) That the accountant is independent with respect to the insurer and conforms to the standards of the profession as contained in the Code of Professional Ethics and pronouncements of the AICPA and the Rules of Professional Conduct of the Virgin Islands Board of Accountancy, or similar code;

(2) A general description of the accountant's background and experience, and a description of the insurer auditing experience of the staff assigned to the engagement and whether each is an independent certified public accountant. Nothing within this Chapter shall be construed as prohibiting the accountant from utilizing such staff as the accountant considers appropriate where use is consistent with the standards prescribed by generally accepted auditing standards;

(3) That the accountant understands the annual audited financial report and the accountant's opinion thereon will be filed in compliance with this Chapter and that the Commissioner will be relying on this information in the monitoring and regulation of the financial position of insurers;

(4) That the accountant consents to the requirements of section 633 of this Chapter and that the accountant consents and agrees to make available for review by the Commissioner, or the Commissioner's designee or appointed agent, the workpapers, as defined in section 633;

(5) A representation that the accountant is properly licensed by an appropriate state licensing authority and is a member in good standing in the AICPA; and

(6) A representation that the accountant is in compliance with the requirements of section 627.

§633. Definition, Availability and Maintenance of Independent Certified Public Accountants Work Papers

(a) Work papers are the records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the accountant's audit of the financial statements of an insurer. Work papers, accordingly, may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of their audit of the financial statements of an insurer and which support the accountant's opinion.

(b) Every insurer required to file an audited financial report pursuant to this Chapter, shall require the accountant to make available for review by examiners of the Division, all work papers prepared in the conduct of the accountant's audit and any communications related to the audit between the accountant and the insurer, at the offices of the insurer, at the Division or at any other reasonable place designated by the Commissioner. The insurer shall require that the accountant retain the audit work papers and communications until the Division has filed a report on examination covering the period of the audit but no longer than seven years from the date of the audit report.

(c) In the conduct of a review under subsection (b), photocopies of pertinent audit work papers may be made and retained by the Division. The reviews by the Division's examiners are considered investigations and all working papers and communications obtained during the course of the investigations must be afforded the same confidentiality as other examination work papers generated by the Division.

§634. Requirements for Audit Committees

This section does not apply to foreign or alien insurers licensed in this Territory or an insurer that is a SOX Compliant Entity or a direct or indirect wholly-owned subsidiary of a SOX Compliant Entity.

(a) The audit committee is directly responsible for the appointment, compensation and oversight of the work of any accountant including resolution of disagreements between management and the accountant regarding financial reporting for the purpose of preparing or issuing the audited financial report or related work pursuant to this Chapter. Each accountant shall report directly to the audit committee.

(b) The audit committee of an insurer or group of insurers is responsible for overseeing the insurer's Internal audit function and granting the person or persons performing the function suitable authority and resources to fulfill their responsibilities if required by section 635.

(c) Each member of the audit committee is a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to section (f) and section 621(c).

(d) To be considered independent for purposes of this subsection, a member of the audit committee may not, other than in the member's capacity as a member of the audit committee, the board of directors, or any other board committee, accept any consulting, advisory or other compensatory fee from the entity or be an affiliated person of the entity or any subsidiary thereof. However, if the law requires board participation by otherwise non-independent members, that law prevails and the members may participate in the audit committee and be designated as independent for audit committee purposes, unless they are an officer or employee of the insurer or one of its affiliates.

(e) If a member of the audit committee ceases to be independent for reasons outside the member's reasonable control, that person, with notice by the responsible entity to the state or territory, may remain an audit committee member of the responsible entity until the earlier of the next annual meeting of the responsible entity or one year from the occurrence of the event that caused the member to be no longer independent. In determining independence, the Commissioner shall consider utilizing guidance provided in the SEC's Final Rule No. 33-8220, Standards Relating to Listed Company Audit Committees adopted April 9, 2003 and any amendments thereto.

(f) To exercise the election of the controlling person to designate the audit committee for purposes of this Chapter, the ultimate controlling person shall provide written notice to the commissioners of the affected insurers. Notification must be made timely prior to the issuance of the statutory audit report and include a description of the basis for the election. The election can be changed through notice to the Commissioner by the insurer, which must include a description of the basis for the change. The election remains in effect for perpetuity, until rescinded.

(g)(1) The audit committee shall require the accountant that performs for an insurer any audit required by this Chapter to timely report to the audit committee in accordance with the requirements of SAS 61, Communication with Audit Committees, or its replacement, including:

(A) All significant accounting policies and material permitted practices;

(B) All material alternative treatments of financial information within statutory accounting principles that have been discussed with management officials of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant; and

(C) Other material written communications between the accountant and the management of the insurer, such as any management letter or schedule of unadjusted differences.

(2) If an insurer is a member of an insurance holding company system, the reports required by paragraph (1) may be provided to the audit committee on an aggregate basis for insurers in the holding company system, provided that any substantial differences among insurers in the system are identified to the audit committee.

(h) The proportion of independent audit committee members must meet or exceed the following criteria:

Prior Calendar Year Direct Written and Assumed Premiums		
\$0 - \$300,000,000	Over \$300,000,000 - \$500,000,000	Over \$500,000,000
No minimum requirements. See also Note A and B.	Majority (50% or more) of members shall be independent. See also Note A and B.	Supermajority of members (75% or more) shall be independent. See also Note A.

Note A: The Commissioner has authority afforded by law to require the entity's board to enact improvements to the independence of the audit committee membership if the insurer is in a RBC action level event, meets one or more of the standards of an insurer deemed to be in hazardous financial condition, or otherwise exhibits qualities of a troubled insurer.

Note B: All insurers with less than \$500,000,000 in prior year direct written and assumed premiums are encouraged to structure their audit committees with at least a supermajority of independent audit committee members.

Note C: Prior calendar year direct written and assumed premiums must be the combined total of direct premiums and assumed premiums from non-affiliates for the reporting entities.

(i) An insurer with direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$500,000,000 may make application to the Commissioner for a waiver from the requirements of this section based upon hardship. The insurer shall file, with its annual statement filing, the approval for relief from the requirements of this section with the states that it is licensed in or doing business in and the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

(j) The company officer responsible for financial reporting under section 637 may not be a member of the audit committee.

(k) The independent committee members shall meet periodically, with no management present, with the independent certified public accountant to discuss the strengths and weaknesses of the insurer's or group of insurers' internal control environments.

§635. Internal Audit Function Requirements

(a) Exemption – An insurer is exempt from the requirements of this subsection if:

(1) The insurer has annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$500,000,000; or

(2) If the insurer is a member of a group of insurers that has annual direct written and unaffiliated assumed premium including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$1,000,000,000.

(b) **Function** – The insurer or group of insurers shall establish an internal audit function that provides independent, objective and reasonable assurance to the audit committee and the insurer's management regarding the insurer's governance, risk management and internal controls. This assurance is provided by performing general and specific audits, reviews and tests and by employing other techniques deemed necessary to protect assets, evaluate control effectiveness and efficiency, and evaluate compliance with policies and regulations.

(c) **Independence** – To ensure that internal auditors remain objective, the internal audit function must be organizationally independent. Specifically, the internal audit function will not defer ultimate judgment on audit matters to others and shall appoint an individual to head the internal audit function who will have direct and unrestricted access to the board of directors. Organizational independence does not preclude dual-reporting relationships.

(d) **Reporting** – The head of the internal audit function shall report to the audit committee regularly, but no less than annually, on the periodic audit plan, factors that may adversely impact the internal audit function's independence or effectiveness, material findings from completed audits and the appropriateness of corrective actions implemented by management as a result of audit findings.

(e) **Additional Requirements** – If an insurer is a member of an insurance holding company system or included in a group of insurers, the insurer may satisfy the internal audit function requirements set forth in this section at the ultimate controlling parent level, an intermediate holding company level or the individual legal entity level.

§636. Conduct of Insurer in Connection with the Preparation of Required Reports and Documents

(a) No director or officer of an insurer shall, directly or indirectly:

(1) Make or cause to be made a materially false or misleading statement to an accountant in connection with any audit, review or communication required under this chapter; or

(2) Omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which the statements were made, not misleading to an accountant in connection with any audit, review or communication required under this chapter.

(b) No officer or director of an insurer, or any other person acting under the direction thereof, shall directly or indirectly take any action to coerce, manipulate, mislead or fraudulently influence any accountant engaged in the performance of an audit pursuant to this chapter if that person knew or should have known that the action, if successful, could result in rendering the insurer's financial statements materially misleading.

(c) For purposes of subsection (b), actions that, "if successful, could result in rendering the insurer's financial statements materially misleading" include, but are not limited to, actions taken at any time with respect to the professional engagement period to coerce, manipulate, mislead or fraudulently influence an accountant:

(1) To issue or reissue a report on an insurer's financial statements that is not warranted in the circumstances due to material violations of statutory accounting principles prescribed by the Commissioner, generally accepted auditing standards, or other professional or regulatory standards;

(2) Not to perform an audit, review or other procedures required by generally accepted auditing standards or other professional standards;

(3) Not to withdraw an issued report; or

(4) Not to communicate matters to an insurer's audit committee.

§637. Management's Report of Internal Control over Financial Reporting

(a) Every insurer required to file an audited financial report pursuant to this chapter that has annual direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of \$500,000,000 or more, shall prepare a report of the insurer's or group of insurers' internal control over financial reporting. The report shall be filed with the Commissioner along with the Communication of Internal Control Related Matters Noted in an Audit described under section 631. Management's Report of Internal Control over Financial Reporting must be prepared as of December 31 immediately preceding.

(b) Notwithstanding the premium threshold in subsection(a), the Commissioner may require an insurer to file Management's Report of Internal Control over Financial Reporting if the insurer is in any RBC level event or meets any one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in chapter 21, section 519 of this title.

(c) An insurer or a group of insurers that is:

(1) directly subject to Section 404;

(2) part of a holding company system whose parent is directly subject to Section 404;

(3) not directly subject to Section 404 but is a SOX Compliant Entity; or

(4) a member of a holding company system whose parent is not directly subject to Section 404 but is a SOX Compliant Entity; may file its or its parent's Section 404 Report and an addendum in satisfaction of this section requirement provided that those internal controls of the insurer or group of insurers having a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements (those items included in section 625 (b)(2) through (b)(7)) were included in the scope of the Section 404 Report. The addendum must be a positive statement by management that there are no material processes with respect to the preparation of the insurer's or group of insurers' audited statutory financial statements (those items included in section 625 (b)(2) through (b)(7)) excluded from the Section 404 Report. If there are internal controls of the insurer or group of insurers that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements and those internal controls were not included in the scope of the Section 404 Report, the insurer or group of insurers may either file (i) a report under this section, or (ii) the Section 404 Report and a report under this section for those internal controls that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements not covered by the Section 404 Report.

(d) Management's Report of Internal Control over Financial Reporting must include:

(1) A statement that management is responsible for establishing and maintaining adequate internal control over financial reporting;

(2) A statement that management has established internal control over financial reporting and an assertion, to the best of management's knowledge and belief, after diligent inquiry, as to whether its internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles;

(3) A statement that briefly describes the approach or processes by which management evaluated the effectiveness of its internal control over financial reporting;

(4) A statement that briefly describes the scope of work that is included and whether any internal controls were excluded;

(5) Disclosure of any unremediated material weaknesses in the internal control over financial reporting identified by management as of December 31 immediately preceding. Management is not permitted to conclude that the internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles if there is one or more unremediated material weaknesses in its internal control over financial reporting;

(6) A statement regarding the inherent limitations of internal control systems; and

(7) Signatures of the chief executive officer and the chief financial officer, or equivalent position or title.

(e) Management shall document and make available upon financial condition examination the basis upon which its assertions, required in subsection (d), are made. Management may base its assertions, in part, upon its review, monitoring and testing of internal controls undertaken in the normal course of its activities.

(1) Management shall have discretion as to the nature of the internal control framework used, and the nature and extent of documentation, in order to make its assertion in a cost effective manner and, as such, may include assembly of or reference to existing documentation.

(2) Management's Report on Internal Control over Financial Reporting, required by subsection (a), and any documentation provided in support thereof during the course of a financial condition examination, shall be kept confidential by the Division.

§638. Discretionary Grant of Exemptions and Effective Dates

(a) Upon written application of any insurer, the Commissioner may grant an exemption from compliance with any and all provisions of this Chapter if the Commissioner finds, upon review of the application, that compliance with this Chapter would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. Not more than 10 days after a denial of an insurer's written request for an exemption from this Chapter, the insurer may request in writing a hearing on its application for an exemption. The hearing shall be held in accordance with the regulations of the Division pertaining to administrative hearing procedures.

(b) Domestic insurers retaining a certified public accountant who qualifies as independent on the effective date of this Chapter shall comply with this section for the end of the year following the effective date of this Chapter, and each year thereafter unless the Commissioner permits otherwise.

(c) Domestic insurers not retaining a certified public accountant who qualifies as independent on the effective date of this Chapter may meet the following schedule for compliance unless the Commissioner permits otherwise:

(1) As of the end of the year following the effective date of this Chapter, file with the Commissioner an audited financial report

(2) For each year thereafter, insurers shall file with the Commissioner all reports and communication required by this section.

(d) Foreign insurers shall comply with this Chapter for the end of the year following the effective date of this Chapter, and each year thereafter, unless the Commissioner permits otherwise.

(e) The requirements of section 627(d)(1) apply to audits occurring January 1st of the second calendar year following the effective date of this Chapter.

(f) The requirements of section 634 are effective January 1st of the second calendar year following the effective date of this Chapter. An insurer or group of insurers that is not required to have independent audit committee members or only a majority of independent audit committee members, as opposed to a supermajority, because the total written and assumed premium is below the threshold and subsequently becomes subject to one of the independence requirements due to changes in premium shall have one year following the year the threshold is exceeded, but not earlier than January 1st of the second calendar year following the enactment of this Chapter, to comply with the independence requirements. Likewise, an insurer that becomes subject to one of the independence requirements as a result of a business combination shall have 1 calendar year following the date of acquisition or combination to comply with the independence requirements.

(g) The requirements of section 637 and other modified sections, except for section 634 covered above, are effective beginning with the reporting period ending December 31st of the second calendar year following the effective date of this Chapter, and each year thereafter. An insurer or group of insurers that is not required to file a report because the total written premium is below the threshold and subsequently becomes subject to the reporting requirements has two years following the year the threshold is exceeded to file a report. Likewise, an insurer acquired in a business combination has two calendar years following the date of acquisition or combination to comply with the reporting requirements.

(h) The requirements of section 635 are effective January 1st of the second calendar year following the effective date of this Chapter. If an insurer or group of insurers that is exempt from the section 635 requirements no longer qualifies for that exemption, it has one year after the year the threshold is exceeded to comply with the requirements of this Chapter.

§639. Required Filings for Alien Insurers

(a) Canadian, British and all other alien insurers shall file each year an audited financial report with the Commissioner on or before September 30 for the year ended December 31 immediately preceding. The Commissioner may waive any provision of this section which may be inapplicable to alien insurers.

(b) The annual audited financial report must be defined as the annual statement of total business on the form filed by such companies with their supervision authority duly audited by an independent chartered accountant, chartered or certified.

(c) For such insurers, the letter required in section 626 (b) must state that the accountant is aware of the requirements relating to the annual audited financial report filed with the Commissioner pursuant to section 622 and shall affirm that the opinion expressed is in conformity with those requirements.

§640. Severability Provision

If any section or portion of a section of this Law or its applicability to any person or circumstance is held invalid by a court, the remainder of this Chapter or the applicability of the provision to other persons or circumstances are not be affected."

SECTION 2. Title 22 Virgin Islands Code, chapter 9, section 222a is repealed.

Thus passed by the Legislature of the Virgin Islands on August 31, 2018.

Witness our Hands and Seal of the Legislature of the Virgin Islands this 13th Day of September, A.D., 2018.



A handwritten signature in blue ink, reading "Myron D. Jackson".

Myron D. Jackson
President

A handwritten signature in blue ink, reading "Jean A. Forde".

Jean A. Forde
Legislative Secretary



Bill No. 32-0233 hereby approved.

Witness my hand and the Seal of the
Government of the United States
Virgin Islands at Charlotte Amalie,
St. Thomas, this 25th day of September, 2018 A.D.

 A handwritten signature in blue ink, reading "Kenneth E. Mapp".

Kenneth E. Mapp
Governor